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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

METROPOLITAN LIFE INSURANCE
COMPANY,

Plaintiff,

vs.

DIANE SIMPSON,

Defendant

Case No.: 04-CV-4164 PJH

DECLARATION OF BRUCE C.F.
MCARTHUR,

AND,

STIPULATION AND REQUEST FOR
ORDER CONTINUING METROPOLITAN
LIFE INSURANCE COMPANY'S MOTION
FOR SUMMARY JUDGMENT.

AND

ORDER CONTINUING HEARING

DIANE T. SIMPSON

Counterclaimant,

vs.

METROPOLITAN LIFE INSURANCE
COMPANY, and Does 1-5, inclusive,

Counterdefendants

I, Bruce C.F. McArthur, say:

1. I am an attorney licensed to practice in all Courts of the State of California, and in the U.S. District Court for the Northern District of California, and I am counsel of record for Defendant and Counterclaimant Diane T. Simpson, herein.
2. I have personal knowledge of the facts stated herein and if called as a witness, I could competently testify thereto. I am familiar with the pleadings and discovery herein and all proceedings that have taken place in this action.
3. Recently, Plaintiff and Counterdefendant Metropolitan Life Insurance Company ("MetLife") filed, in conformity with a previous Case Management Order of this Court, a Motion for Summary Judgment herein, with a hearing date of February 7, 2007. Under the Briefing Schedule Ordered by the Court, Opposition was to be filed not later than Wednesday January 17, 2007, and the Reply was to be filed not later than January 24, 2007.
4. I am preparing the Opposition to the Motion. I learned recently, however, that a key expert witness, neuropsychologist Vivian Clayton, Ph.D., from whom I must obtain a detailed Declaration which will be submitted as part of the Opposition to the Motion, is unavailable and cannot consult with me, or work on the preparation and completion of the Declaration in question, until approximately January 25th and 26th, 2007. The reason for this unavailability includes multiple causes, including (1) Dr. Clayton's involvement in another legal matter (she was required to work on that matter and to testify in Court last week, and her involvement in that matter is apparently not yet concluded), (2) Jewish religious holidays and previous commitments for her Temple, and (3) the fact that she was scheduled for hand surgery under general anesthesia, which was to take place yesterday, Monday, January 15, 2007. (I assume the surgery took place yesterday as scheduled.)
5. Dr. Clayton's Declaration is central to Defendant's Opposition to the pending Motion for Summary Judgment. Dr. Clayton has agreed to provide a Declaration, but is unable to address this matter until January 25th or 26th. Defendant's Memorandum of Points and Authorities in Opposition, also cannot be completed until the Declaration of Dr. Clayton is completed and signed.

6. As soon as I learned of the foregoing (Dr. Clayton's unavailability), I contacted MetLife's counsel, Richard Hopkins, to advise him of the foregoing. Mr. Hopkins has agreed to continue the hearing to February 28, 2007, assuming that date is available, and acceptable to this Court, with a revision of the briefing schedule, so that the Opposition (including the Clayton Declaration) will be filed not later than January 31, 2007, with the Reply due on February 14, 2007. This provides Mr. Hopkins with some additional time to submit his Reply, to accommodate his pre-existing deposition schedule in another case.
7. This hearing has not previously been continued, nor has there been a request for continuance. Neither party has previously requested a continuance from this Court, of any matter. There is no presently scheduled trial date in this case, and to my knowledge, this continuance will have no discernable impact on the scheduling of any other matters in this case.
8. Based on the foregoing circumstances, the parties have stipulated to the continuance of the hearing, as set forth below.

I declare under penalty of perjury under the law of the State of California and of the United States, that the foregoing is true and correct.

Dated: January 16 2007



Bruce C.F. McArthur

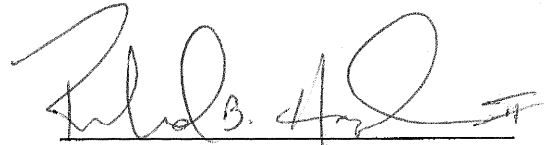
STIPULATION:

The parties hereto, (1) Metropolitan Life Insurance Company and (2) Diane T. Simpson, by and through their respective Counsel of Record herein, hereby stipulate to continue the hearing of Metropolitan Life Insurance Company's Motion for Summary Judgment, as follows:

The hearing, presently set for February 7, 2007, at 9:00 a.m. in Courtroom 3, 17th Floor, before The Honorable Phyllis J. Hamilton, will be continued to February 28, 2007, at 9:00 a.m. in Courtroom 3, 17th Floor, before The Honorable Phyllis J. Hamilton. The Opposition of Defendant and Counterclaimant Diane T. Simpson will be filed electronically not later than January 31st, 2007. The

1 Reply of Plaintiff and Counterdefendant Metropolitan Life Insurance Company will be filed
2 electronically not later February 14th, 2007. By entering into this Stipulation, MetLife does not waive
3 its right to object to the Declaration of Vivian Clayon (or other Declarations) on all possible grounds,
4 including without limitation, admissibility and relevance.
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8 Dated: January 16, 2007



Richard Hopkins

Counsel for Plaintiff and Counterdefendant
Metropolitan Life Insurance Company

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12 Dated: January 16, 2007



Bruce C.F. McArthur

Counsel for Defendant and Counterclaimant
Diane T. Simpson

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16 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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18 Dated: January 18, 2007

19 THE HONORABLE

